liabilities, as demands between debtor and creditor as such, and not punishments inflicted pro bono publico for crimes committed. In the case of *In re Rouse*, 1 Am. B. R. 393, a statutory liability of corporate shareholders, was held to be a debt provable in bankruptcy. The statute involved was an Ohio Statute which had been held not to be penal in its nature but partook rather of the nature of a contract and so the case was distinguished from those decided under the law of 1867 and cited supra. In *Patterson* v. *Thompson*, 86 Fed. 85, the court said that statutes making officers and directors of a corporation responsible to its creditors for losses growing out of the negligent, wrongful, or fraudulent conduct of its officers, are considered by most courts as of a penal nature and not arising out of contract. Evidently the Ohio statute is among the minority, but the decision of the bankruptcy court could not well have been otherwise, in view of the practice of these courts to follow the interpretation placed by the state courts upon their own statutes.

The case of *Clark* v. *Rogers*, supra, presents a somewhat simpler situation as to claims provable, which are founded upon implied contract. There the question was, as to whether the conversion of the securities composing part of the trust estate, was such a tort as would give the injured party a claim against the tort-feasor, recoverable in either tort or contract. Applying the test of unjust enrichment, and benefit to the tort-feasor, as above stated, it would seem to readily follow that the injured party had such a claim, and being such, it was provable in bankruptcy against the estate of the tort-feasor. The court held that there was an express contractual obligation upon the probate bond bringing the case within § 63 a (4) of the Act of 1898. Yet aside from this it held that there existed an obligation of a contractual nature resting upon the defaulting trustee to restore the value of the property he had embezzled.

The court having determined that the claim was a provable one, found the injured party to be a creditor. See Act of 1898, ch. I, § 1 a (9). A conveyance therefore by one who is insolvent, of part of his assets to a creditor, operating as a preference, brings the case within the provisions of § 60 b of the Bankruptcy Act and this was the ultimate proposition to be determined. The case of a return of a part of the funds of a trust estate by a trustee who had embezzled the funds of a number of trusts held by him, the return being made while the trustee was insolvent, is a unique instance of a preference of creditors.

These cases appear to be fair illustrations of situations constantly bound to arise, which though not apt to cause any contrariety of opinion upon the fundamental principles involved, are yet certain to be puzzling enough to test to their utmost the rather mechanical rules applied. J. C. M.

MAY A STATE, IN THE EXERCISE OF ITS POLICE POWER, REGULATE INSURANCE RATES?—The first case ever decided in this country involving the validity of state legislation regulating the rates of insurance was recently rendered by the United States Circuit Court. *American Surety Company of New York* v. *Shallenberger, et al.* (1911), — C. C. D., Neb., L. D. —, 183 Fed. 636.

The legislature of Nebraska in 1909 passed an act which declared it to be the duty of the Governor, Attorney General and Auditor of Public Accounts to fix the maximum rates of premiums which any fidelity or surety company transacting business in the state might charge for furnishing surety and fidelity bonds. The state officers designated, in pursuance of the statute, fixed the maximum rate of premium for such insurance, and complainant thereupon brought an action to enjoin the enforcement of the statute. *Held,* that the business of a corporation engaged in furnishing surety bonds is not one affected by any public interest nor a monopoly, but is purely a private business, and a state has no power to prescribe the maximum rates to be charged by such corporation.

If the act in question had been imposed on foreign insurance corporations alone, it would doubtless have been sustained, in accordance with the doctrine declared in *Doyle* v. *The Continental Ins. Co.,* 94 U. S. 535; *Security Mut. Life Ins. Co.* v. *Prewitt,* 202 U. S. 246, 26 Sup. Ct. 619, whereby discriminations of this nature were upheld as valid conditions precedent to the right to engage in business in the state imposing them. The Nebraska statute, however, applied, in express terms, to both foreign and domestic companies, and consequently its validity was considered on strict principles of constitutional law, the critical question being whether the act, in violation of the Fourteenth Amendment, deprived the complainant of liberty to contract. The case, while dealing only with that branch of insurance transacted by surety companies, may fairly be said to be an adjudication relating to the business of insurance in general; the court in fact stated, by way of dictum at least, that the case involved the "power of a state to fix the rates to be charged for insurance."

The right of a state to impose regulations on the conduct of business enterprises, within the Fourteenth Amendment, is conceded by the courts in cases where the particular business is devoted to a public use or affected by a public interest. This control by the state, commonly known as police power, assumes one of the following forms: the regulation of charges, the requirement of equal service, requirements in the interest of public convenience and requirements and restraints in the interest of financial security. FREUND, POLICE POWER, § 373.

Legislation regulating prices and charges in this country has been upheld in cases affecting railroad, telephone, telegraph, gas and electrical companies, warehouses, stockyards, canals, bridges, turnpikes, ferries, etc. The principal case on the subject is *Munn* v. *Illinois,* 94 U. S. 113, which announced the principle that "when one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created." The basis of the decision in *Munn* v. *Illinois* was that the business of storing grain in warehouses in a commercial center constitutes a de facto monopoly, and since competition is absent, state regulation of the rates which may be charged is necessary for the prevention of oppression. This case was followed in *Budd* v. *New York,* 143 U. S. 517, 12 Sup. Ct. 468.

When, however, no monopoly exists, either virtual or de jure, the power to regulate rates and charges presents serious difficulties. What circumstances operate to clothe an occupation or business with a public interest is not determinable by any exact formula or rule. It certainly does not follow from the mere fact that the public has an interest in a particular business undertaking, that that business is "clothed with a public interest," for that would subject the business of the merchant, the manufacturer, and other occupations recognized as juris privati to public regulation. As stated by the Court of Appeals of New York in *People* v. *Budd,* supra, no general power resides in the state legislature to regulate private business, to prescribe the conditions under which it should be conducted, to fix the price of commodities or services, or to interfere with the freedom of contract. The merchant, manufacturer, artisan and laborer, under our system of government, are left to pursue their way, untrammeled by burdensome and restrictive regulations.

Judge COOLEY, while stating that any generalization is necessarily inadequate, said that property in business is affected with a public interest: (1) Where the business is one the following of which is not of right, but is permitted by the state as a privilege or franchise. (2) Where the state, on public grounds, renders to the business special assistance, by taxation or otherwise. (3) Where, for the accommodation of the business, some special use is allowed to be made of public property or of a public easement. (4) Where exclusive privileges are granted in consideration of some special return to be made to the public. COOLEY, CONST. LIM. (Ed. 6), p. 738.

To revert to the principal case: it would seem impossible for any court to declare valid a statute regulating the rates of insurance on any ground heretofore recognized. The controlling doctrine of *Munn* v. *Illinois* clearly does not apply, for the insurance business is strictly competitive. Nor do any of the criteria suggested by Judge COOLEY find application. As stated by the Circuit Court in the principal case, individuals and partnerships are free to furnish surety bonds in competition with the complainant and to make any or no charge for furnishing such insurance. Insurance companies have no exclusive franchise; they commonly receive no assistance by taxation—quite the contrary; in short, none of the special reasons seem to exist for considering the interest of the public in the business of insurance as any different in kind from its interest in any large mercantile or manufacturing corporation, whose capital, experience and facilities may enable it to have a widely extended patronage. In some states, however, notably, Pennsylvania, the right to carry on the business of insurance has been by statute expressly restricted to corporations, and denied to individuals and unincorporated associations, and the constitutionality of such legislation has been upheld, although in the face of vigorous dissent. *Commonwealth* v. *Vrooman,* 164 Pa. St. 306, 80 Atl. 217, 25 L. R. A. 250. When an exclusive franchise is thus conferred on a corporation by the state, the reciprocal power of the state to regulate the compensation to be received by the corporation for its services would seem unquestionable. As a general rule, however, the right to engage in the business of insurance in this country is not restricted to corpor-

ations, and the constitutionality of legislation imposing such a restriction is open to serious doubt. VANCE, INSURANCE, § 34.

The United States Supreme Court has recognized that, for some purposes, the business of insurance is a proper object of police regulation by the states. Thus in *Eagle Ins. Co.* v. *Ohio*, 153 U. S. 446, this court held that a state may, in the exercise of its police power, compel an insurance company to make reports to the proper state officers of its business condition, liabilities, premiums, dividends and expenses, etc., without depriving the company of any of its constitutional rights. This decision, however, did not in terms treat the business of insurance as one affected with a public interest. It proceeded on the grounds that a corporation created by the state is subject to such reasonable regulations as the state may prescribe, as to the general conduct of its affairs, serving to secure the ends for which it was created, and not materially interfering with the privileges granted to it.

Two other states beside Nebraska have statutes similar to the one by this case declared unconstitutional. Laws of New Hampshire, 1899, c. 85; Laws of Kansas, 1909, c. 152. In view of the great importance of the question, it is inevitable that the United States Supreme Court will be called upon finally to decide as to the constitutionality of these statutes. Whether that court will extend the doctrine announced in *Eagle Insurance Company* v. *Ohio* and recognize the power of a state to regulate the rates which may be charged by insurers is problematical. A. J. A.

INTEREST UPON LEGACIES WHICH ARE NOT PAYABLE UNTIL LEGATEE ATTAINS CERTAIN AGE.—Testator bequeathed to his son, who was thirteen years of age at the death of the testator, a pecuniary legacy to be paid him on his attaining twenty-five, and a further legacy on his attaining thirty, and also a share of the residue for life. The legatee petitioned for interest on the legacies from the death of the testator. *Held,* that the legacies do not carry interest even up to the time of attaining the age of twenty-one. *In re Abrahams; Abrahams* v. *Bendon* (1910), 80 L. J. Ch. 83.

The rule of law is well established that contingent legacies do not carry interest while in suspense. An equally well established exception to this rule is that contingent legacies to infant children, where the testator has provided no other fund for their maintenance, carry interest from the testator's death until the happening of the contingency. *Bowlby* v. *Bowlby* (1904), 73 L. J. Ch. 810. As thus stated the exception would extend to every case where the legatee is an infant, irrespective of the question whether the contingency is the attaining the age of twenty-one or the happening of any other event, and no statement of it has been found which is not substantially the same as that above. In WILLIAMS, EXECUTORS, Ed. 7, 745, it is thus stated: "Whether the legacy be vested or contingent, if the legatee be not an adult, interest on the legacy will be allowed, as a maintenance, from the time of the death of the testator, if there is no other provision for that purpose." *Lowndes* v. *Lowndes,* 15 Ves. 304, *Cary* v. *Askew,* 1 Cox 244,